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PATENT

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TECHNOLOGY CENTER R3700

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Caudle	Docket No:	D-43260-04
Serial No.:	09/846,714	Examiner:	Jes F. Pascua
Filing Date:	May 1, 2001	GAU:	3727
Title:	Contoured Pouch With Pourable Spout, and Apparatus and Process for Producing Same		

BRIEF ON APPEAL

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This Brief is being filed in triplicate in support of a Notice of Appeal filed June 19, 2002 in which the Applicant appealed from the Final Office Action dated May 9, 2002.

Please charge Deposit Account No. 07-1765 in the amount of \$320.00 for the Appeal Brief Fee, and charge any additional fees which may be required or credit any overpayment to this account.

A Petition for a one (1) month extension of time is enclosed.

Respectfully submitted,

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9-19-02

Date

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Real Party in Interest

The real party in interest in this patent application is Cryovac, Inc.

Related Appeals and Interferences

There are no other appeals or interferences known to applicant, the applicant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

The claims on Appeal are claims 50 to 53.

A copy of the claims presently on Appeal appears in the Appendix.

Status of Amendments

No amendments have been submitted after the Final Action.

In a preliminary amendment of May 1, 2001, the original claims of this divisional application were canceled in favor of new claims 50 to 55. Claims 54 and 55 were canceled by amendment of April 5, 2002. Remaining claims 50 to 53 are the claims now on appeal.

Summary of the Invention

[References to the specification by page and line numbers are shown in parentheses.]

Pouches made from films or laminates, including polymers such as polyethylene or polypropylene, have found use in a variety of applications. For example, such pouches are used to hold low viscosity fluids (e.g., juice and soda), high viscosity fluids (e.g., condiments and sauces), fluid/solid mixtures (e.g., soups), gels, powders, and pulverulent materials. The benefit of such pouches lies, at least in part, in the fact that such pouches are easy to store prior to filling and produce very little waste when discarded. The pouches can be formed into a variety of sizes and shapes. One type of pouch is designed to lie on a supporting surface and is generally known as a pillow-type pouch. Alternatively, pouches have been described which include a base for maintaining the pouch in an upright configuration. (page 1, lines 9 to 18).

Pouches can be assembled from films, laminates, or web materials using form-fill-seal machines. Such machines receive the film, laminate, or web material and manipulate the material to form the desired shape. For example, one or more films, laminates, and/or web materials can be folded and oriented to produce the desired shape. Once formed, the edges of the pouch are sealed and the pouch filled. Typically, the film, laminate, or web material has at least one heat seal layer or adhesive surface which enables the edges to be sealed by the application of heat. During the sealing process, a portion of at least one edge of the pouch is left unsealed until after the pouch is filled. The pouch is filled through the unsealed portion and the unsealed portion is then sealed. Alternatively, the pouch can be filled and the unsealed portion simultaneously closed in order to provide a sealed pouch with minimal headspace. (page 1, line 19 to page 2, line 9).

Although a variety of pouches have been previously described, none of the known pouches provide ergonomically contoured edges while still providing a pouch which can be manufactured on form-fill-seal machines without generating appreciable, and preferably without generating any, scrap material between subsequent pouches. (page 2, lines 10 to 13).

The present invention overcomes the shortcomings of known pouches by providing a pouch which is ergonomically designed to be easily handled, and can be produced, filled and sealed on a form-fill-seal machine without generating any appreciable scrap material between subsequent pouches. (page 2, lines 14 to 24).

Issues

The issues presented for review are as follows:

1. Are claims 50 to 53 unpatentable under 35 U.S.C. §102 (b) as being anticipated by Schwartzkopf (US 3,448,915)?
2. Are claims 50 to 53 unpatentable under 35 U.S.C. §102 (b) as being anticipated by Bell (US 5,971,613)?

Grouping of Claims

For the purpose of this appeal, the claims are grouped together.

Argument

1. **Claims 50 to 53 are pat ntably distinct from, and not anticipat d by, Schwartzkopf (US 3,448,915).**

Schwartzkopf shows a *double* bag made up of two tapered bags which complement to form a rhombus or rectangle (column 1, lines 46 to 53). Even where the lateral edges are curved, as in Figures 7 and 8 of the reference, each *individual* bag of the double bag arrangement never has a concave surface and a convex surface, wherein the concave surface of the first lateral edge is substantially opposite the convex surface of the second lateral edge, and the convex surface of the first lateral edge is substantially opposite the concave surface of the second lateral edge. Instead, as shown in Figures 7 and 8, the individual pouch has a concave opposite concave format, and a convex opposite convex format. The Final Office Action of May 9, 2002 states, at paragraph 3 on page 2, that:

the convex and concave surfaces of the lateral edge seam 34 or 35 are "substantially opposite" the convex and concave surfaces of the lateral edge seam 33 in each single pouch of the Schwartzkopf pair of pouches.

Applicant agrees in part and disagrees in part with this statement. Applicant agrees to the characterization as the "Schwartzkopf pair of pouches". These are indeed pairs of pouches, not individual pouches. Each pouch of the pair has its own dimensions, and its own opening.

Within each single pouch (see e.g. Figure 7) a concave segment of edge 34 (the lower part of the pouch) is opposite a convex part of edge 33. This is clearly seen in Figure 7. Thus, applicant does not agree that the convex and concave surfaces of the lateral edge seam 34 or 35 are "substantially opposite" the convex and concave surfaces of the lateral edge seam 33 in each *single* pouch of a pair of pouches.

Please note in this regard column 2 of the reference, where Schwartzkopf, in briefly describing the drawings, states that

FIGS. 7 and 8 show each a pair of tapered sleeves having curved side edges and made from two flat sheeting webs . . .

It is clear, both from Schwartzkopf's specification and drawings, that he contemplates that what is pictured in FIG. 7 are *two, attached pouches or sleeves*. When these are separated, by heat seal seam 33 (see FIG. 7 and column 3, lines 36 to 42) the result are two pouches, each with a shape that is wider than one end than the other, and where the concave surface of the first lateral edge (of each of the two *individual* pouches of FIG. 7) is not substantially opposite the convex surface of the second lateral edge and the convex surface of the first lateral edge is not substantially opposite the concave surface of the second lateral edge.

Although no rejections have been made to the claims under 35 U.S.C. §103, applicants note for the record that the individual pouch of Schwartzkopf is always tapered. This means that the distance between the lateral edges, at any elevation of the pouch, will change. Thus, making an individual pouch according to Schwartzkopf would not achieve a central object of the present invention: the manufacture of pouches without generating scrap between subsequent pouches in a VFFS arrangement. This is why Schwartzkopf is forced to manufacture two connected pouches at a time, such as depicted in FIG. 7.

The Final Office Action goes on to state, at paragraph 4 on page 2, that:

Figs. 7 and 8 of Schwarzkopf show a single pouch that is separable into two, smaller compartments.

Applicant completely disagrees with this statement. It is factually incorrect, and ignores the plain teaching of the reference itself. Schwartzkopf explicitly calls these "each a pair of tapered sleeves". He makes no reference to "smaller compartments". It is also clear from the reference that what Schwartzkopf contemplates using as a sleeve is not the "pair" of sleeves, but the individual, *tapered* sleeves joined together by a perforated heat seam. The title of the patent is "Tapered Bags Or Sleeves Made From Plastic Material Sheeting And Joined By Tearable Perforation Lines."

Applicant respectfully submits that claims 50 to 53 are novel over, and not anticipated by, the Schwartzkopf reference.

2. Claims 50 to 53 are pat ntably distinct from, and not anticipat d by, B II (US 5,971,613).

The Final Office Action states, at paragraph 5 on page 3, that:

Bell discloses, in Fig. 4, a single pouch comprising first and second lateral edges 164, 166. the first and second lateral edges include convex and concave surfaces (e.g. substantially s-shaped or non-rectilinear) surfaces or portions 204 that are "substantially opposite" each other. Bell further shows the distance between the first and second lateral edges 164, 166 at portions 192, 194 as substantially the same for all elevations of the pouch.

Applicant respectively disagrees. **Bell** discloses various configurations of a bag having "first and second edges 36, 38" (column 4, line 44, Figure 2); "opposite side edges 114, 116" (column 7, line 48, Figure 3); or "side edges 164,166" (column 9, lines 9 and 10, Figure 4). These are the lateral edges of the pouch. The element 204 referred to in the Office Action is part of each of the *seals* 192 and 194. To be sure, these seals are arranged such that they have an inner surface with convex and concave shapes; however, these seals are distinct from the lateral edges of the bag. The edges are in fact the **outer** edge of the seals. An edge itself has no lateral dimension. It is the "line where an object or area begins or ends: border" (Webster's New Collegiate Dictionary, 1975, page 361, definition 2a.) Claim 50 recites edges each comprising a concave surface and a convex surface. Since an edge has no lateral dimension, and in the light of the specification and drawings of the present application, this clearly means that each lateral edge will have a shape, at the respective sides of the pouch, defining a concave or convex surface as recited. The inner edge of the seals of Bell are not lateral edges of the pouch.

[It should also be noted that even if, for the sake of argument, the inner surfaces of the seals of Bell were treated as the lateral edges of the bag, the convex and concave surfaces are in any event not substantially opposite one another. For convenience, and as an example of this, attention is directed to the horizontal line 39 in the lower part of Figure 2. It can be seen that the portion of the inner edge 60 of seal 40 that intersects horizontal line 39 is convex (space 59) with respect to the left outer edge 36 of the bag. At the other end of line 39, the portion of the inner edge 60 of seal 42 that intersects

horizontal line 39 is convex with respect to the right outer edge 38 of the bag. Thus, convex is opposite convex. This is true for Figures 3 and 4 as well. Bell therefore does not show in any event a pouch ***wherein the concave surface of the first lateral edge is substantially opposite the convex surface of the second lateral edge*** and the convex surface of the first lateral edge is substantially opposite the concave surface of the second lateral edge (cf. claim 50), even assuming that the inner surfaces of the seals of Bell are the lateral edges of the bag].

The applicant respectfully asks the Board to reverse the finding of the Final Office Action, and to allow claims 50 to 53.

Appendix

50. A single pouch comprising a first lateral edge and a second lateral edge, each of the first and the second lateral edges comprising a concave surface and a convex surface, wherein the concave surface of the first lateral edge is substantially opposite the convex surface of the second lateral edge and the convex surface of the first lateral edge is substantially opposite the concave surface of the second lateral edge.

51. The single pouch of claim 50 wherein at least one of the first and the second lateral edges is substantially S-shaped.

52. A single pouch comprising a first lateral edge and a second lateral edge, the first lateral edge comprising a concave surface and the second lateral edge comprising a convex surface, wherein the concave surface of the first lateral edge is substantially opposite the convex surface of the second lateral edge.

53. The single pouch of claim 52 wherein at least one of the first and the second lateral edges is substantially S-shaped.